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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959.

No. 256

ALLEN C. KAYE-MARTIN and
HARRY M. HANSEN,
Petitioners,

vs.

PIERCE P. BROOKS,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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INDEX

	PAGE
Opinions below	1, 2
Jurisdiction	2
Questions Presented	2-4
Statement of the Case	5-8
The Facts	5-8
Defendant's Fortuitous Presence in Illinois	8
Opinion of the Court of Appeals	1a
Illinois Statute	9
Reasons for Granting the Writ	11-15
The fact that the Defendant selected Illinois as the place to transact business for the reason of convenience, i.e. Because he also desired to attend a convention in Illinois, does not cause his presence in Illinois to be "Wholly Fortuitous", and therefore under the "Constitutional Framework" (i.e. the due process clause) to exempt the transaction of such business from the provisions of the non-resident jurisdictional statute	11
Business transacted in a state has a "Substantial Connection" with that state, if the business so transacted is of such importance that the suit would not have been brought if such business had not been transacted, and if such business must be alleged in the complaint and proved at the trial in order to maintain the cause of action	13
Conclusion	15
Order of Affirmance	8a
Order denying petition for rehearing	9a
Clerk's certificate	10a

List Of Authorities Cited.

PAGE

Compania de Astral v. Boston Metals Co., 205 Md. 237 13

Hanson v. Denckla, 357 U.S. 235 ..... 2, 5a, 6a

Henry R. Jahn & Son, v. Superior Court, 323 P. 2d 437, 49 Cal. 2d 855 14

International Shoe Co. v. Washington, 326 U.S. 310 ..... 2, 12, 5a, 6a

McGee v. International Life Ins. Co., 355 U.S. 220 ..... 2, 4, 9, 5a

Nelson v. Miller, 11 Ill. 2d 378 ..... 10, 13

Pennoyer v. Neff, 95 U.S. 714 ..... 5a

Smyth v. Twin State Improvement Corp., 116 Vt. 569 13

W. H. Elliott & Sons Co. v. Nuodex Products Co., 243 F. 2d 116 14

Statutes.

Illinois Statutes Chaper 110, Section 17 (1) 9, 2a

Illinois Statutes Chapter 110, Section 17 (3) 6a

28 U.S.C.A. par. 1254 (1) 2

IN THE

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No.

ALLEN C. KAYE-MARTIN and
HARRY M. HANSEN,

Petitioners,

vs.

PIERCE P. BROOKS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Petitioners, Allen C. Kaye-Martin and Harry M. Hansen, respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit, entered in the above cause on the 15th day of June, 1959.

OPINIONS BELOW.

The oral opinion of the United States District Court for the Northern District of Illinois, Eastern Division, was entered on January 7, 1959 and was not reported, but appears in the printed appendix (App. 48) filed herewith and certified by the Clerk of the Court of Appeals as part of the record transmitted.

The opinion of the United States Court of Appeals for the Seventh Circuit is not yet reported, but is attached hereto as Appendix A, p. 1a, *infra*.

JURISDICTION.

The judgment of the United States Court of Appeals for the Seventh Circuit was entered on June 15th, 1959 (*infra*, Appendix A, p. 8a). A petition for rehearing was denied on July 13, 1959. (*Infra*, Appendix A, p. 9a). The jurisdiction of this Court is invoked under 28 U. S. C. A. par. 1254(1).

QUESTIONS PRESENTED.

On the following questions presented by this petition, the decision of the Court of Appeals is in conflict with the decision of the U. S. Court of Appeals, First Circuit (*Infra*, p. 14) and also the Courts of last resort of several states. (*Infra*, p. 13)

1. Are the decisions of this Court[1] holding that under the due process clause of the U. S. Constitution, a state may acquire jurisdiction over a non-resident defendant where such defendant has had a "minimum contact" with the state "connected with" the cause of action, to now be subjected to the *totally* new condition or limitation stated by the Court of Appeals in this case, that transaction of business by a defendant within the state is "wholly fortuitous" and any service of process based thereon is not within the "constitutional framework", if the non resident defendant selected that state as a place for the transaction of such business because of his "*convenience*"?

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[1] **International Shoe Co. v. Washington, 326 U.S. 310; McGee v. International Life Ins. Co., 355 U.S. 220; Hanson v. Denckla, 357 U.S. 235.**

A. When a non resident defendant himself chooses Illinois (or other state having a comparable statute) as the place to transact his business, and asks the other party to meet him there to discuss and negotiate the proposed contracts (App. 45) which is in fact done, does such defendant fail to "invoke any of the benefits or protection of the laws of the state" because his original *intention* or *purpose* had been to come to Illinois "to attend a convention"? Does the previous *intention* or *purpose* in the mind of such defendant to attend a convention in Illinois, cause his actual transaction of business related to the causes of action while in this state to be "*wholly fortuitous*"? Does it therefore prevent that transaction from becoming the "minimum contact" with the state required under the decisions of this court, and therefore exempt the defendant from the provisions of the State's non resident service statute?

B. In every case, must the court psychoanalyze the mind of the non resident defendant to determine what was his earlier, main or principal "intention" or "purpose" in coming to Illinois (or other state having a comparable statute) as a prerequisite to deciding whether the business related to the cause of action sued upon, actually transacted by him in Illinois, subjected him to the jurisdiction of the Illinois courts? Therefore, was his *intention* or *purpose* in coming to Illinois, coupled with "*any intention* of invoking any of the benefits or protection of the laws of Illinois"? When he undeniably intended to transact this business in Illinois, must his *intention* to "invoke any of the benefits or protection of the laws of Illinois" be shown by independent evidence? Or is it enough to show that he did in fact transact the busi-

ness in Illinois, which he had previously requested be discussed, negotiated and transacted here? Did he thereby obtain "any of the benefits or protection of the Illinois laws," and subject himself to them without independent proof that he so *intended* to do?

2. When part of the business, which gave rise to the ultimate contract sued upon, was transacted outside of the state, does the "constitutional framework" prevent the negotiation and execution by the defendant, within the state, of an agreement containing most of the terms of the contract sued upon, from being *substantial*[2] and therefore the required "minimum contact" with the state to give the state jurisdiction over a cause of action arising out of such contract, when the terms of the contract sued upon which were negotiated and executed by the defendant within the state are such a *substantial* part of the entire contract that they must be alleged in the complaint and proved on the trial in order to maintain the cause of action?

The above questions are material, not only because they involve new and serious limitations which the decision in this case has set upon the operation of the Illinois statute, but also necessarily involve the same limitations upon the operation of comparable statutes of various other states,—and also upon the decisions of this court, pursuant to which those statutes were passed.

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[2] This court held in **McGee v. International Life Ins. Co.**, 355 U.S. 220 at 223 that "it is sufficient for purposes of due process that the suit was based on a contract which had substantial connection with that State".

[3] **Footnote (1), Page 2 supra.**

STATEMENT OF THE CASE.

The defendant Brooks, a resident of Arkansas, was personally served with process in this case outside of the state of Illinois, pursuant to the Illinois non resident Jurisdictional Statute (Footnote (4) page 9), which together with comparable statutes in various other states, was enacted after the decision of this court in *International Shoe Co.* v. *Washington*, 326 U.S. 310, where this court held it to be within the due process clause of the U. S. Constitution for a state to assume jurisdiction over a non resident defendant, where that defendant had had a "minimal contact" with the state relating to the cause of action sued upon. Even though the defendant intended to "transact business" relating to this cause of action in Illinois, (App. 45) the court held that since he had previously "intended" to attend a convention in Illinois, his presence in the state was "wholly fortuitous" and the business transacted in Illinois was not a "minimal contact" with the state. The court held that the defendant had no "intention" of invoking any of the benefits or protections of the laws of the state of Illinois, since he came here to attend a convention. So that what occurred in Chicago was "wholly fortuitous".

THE FACTS.

The facts are not in dispute.

On June 7, 1958 Hansen, a broker in New York City telephoned to the defendant Brooks, who was in California, stating that he might have a party who would be willing to purchase Brooks' 10,000 shares of stock in National Bankers Life Insurance Company, and would like to meet with Brooks *to discuss and negotiate the same.*

(App. 45) *Defendant Brooks* stated that he would do so, and *requested Hansen* to meet him at the Conrad Hilton Hotel in Chicago, Illinois, on June 11, 1958 "*for the purpose of discussing and negotiating such proposed contract* for the sale of Brooks' stock." (App. 45) Although Hansen, the broker, conferred with the plaintiff, Kaye-Martin (as a possible purchaser) in New York City on June 10, 1958, the defendant, Brooks, never met the plaintiff Kaye-Martin or had any negotiations relating to any contract with him until June 11 (App. 47) when Hansen met the defendant, Brooks, in Chicago, Illinois pursuant to defendant Brooks' request that such negotiations take place in Chicago (App. 45). The first contact of the defendant Brooks with the plaintiff Kaye-Martin was while the defendant was in Illinois on June 11, 1958 (App. 47). All the negotiations, and all the terms of what the parties then considered to be a complete agreement for a sale of 10,000 shares of stock from the defendant Brooks to the plaintiff-Kaye-Martin were concluded at that time while Brooks was in Illinois, except that one of those written terms or provisions agreed upon stated that "a *formal agreement*" of all those agreed terms and provisions should be entered into without further delay (App. 17).

After substantial negotiation of all of the items appearing on the proposed agreement which Hansen submitted at that Chicago conference to the defendant Brooks (App. 45, 46), the defendant changed the proposed written contract provisions in his own handwriting at that time, and then "accepted" the contract on its face in his own handwriting, over his own signature (App. 16, 17, 46). Hansen then called the plaintiff Kaye-Martin, who was in New York, on the phone, and Hansen and the defendant Brooks then had extensive negotiations with the plaintiff Kaye-Martin over the telephone, while Brooks the defendant

was still in Chicago, Illinois (App. 46). The following day the defendant Brooks, who was still in Chicago, received the wire from Kaye-Martin, who was in New York, accepting the written agreement, (App. 18, 46) including the changes which Brooks had in his own handwriting placed in the agreement (App. 18) and which Brooks had already "accepted" in writing in Chicago the day before (App. 18, 46).

On June 16, Hansen, the broker, wrote a letter to the plaintiff Kaye-Martin outlining certain details for closing "to fulfill the terms of the agreement" of June 10th, and to fulfill "the customary formalities of closing and delivery" (App. 19, 20). And on June 19th, Hansen wrote a letter to the Vice-President of the escrowee bank, enclosing photostats of the above documents as a guide for its performance as Escrowee in subject matter, and advising that a "more formal" escrow agreement would, no doubt, be drawn (App. 21).

On July 3, 1958 the plaintiff Kaye-Martin and the defendant Brooks met in Dallas, Texas. It then appeared that the Insurance Department of the State of Texas, which had been conducting an extended examination of the National Bankers Life Insurance Company, had severely criticised the acquisition of a large number of assets acquired by said insurance company while under the control of said Brooks (App. 56). So that in Dallas on July 3, 1958, Kaye-Martin and Brooks executed a document which they termed "certain amendments or corrections" to their former agreement, which "amended" their former agreement only in two respects, *i.e.* (1) the price of the stock was reduced from $600 to $500 a share, and (2) the defendant Brooks agreed to replace with cash certain assets of the insurance company whose stock the defendant was selling (App. 23). While the document of July 3 (App. 23) also stated that the deal was

to be consummated by July 10, 1958, that statement was merely a repetition of what the defendant Brooks had already written in his own handwriting in the Illinois agreement of June 10, 1958 (App. 17).

In their Texas amendment of July 3, 1958, the parties stated that what they were there agreeing to were "the above specific corrections and amendments" to their former agreement, and acknowledged the continued binding effect on the parties of their former agreement negotiated and executed by the defendant in Illinois (App. 23).

DEFENDANT'S FORTUITOUS (?) PRESENCE IN ILLINOIS.

The affidavits of the defendant Brooks (App. 32) and of his witness one Arnold (App. 38) state that in the early part of June, 1958 *Brooks attended* an insurance convention in Chicago, which semi-annual meeting of said association he had made a practice of attending for ten years. There is no further evidence anywhere in the record relating to the "purpose" or "intention" of Brooks in coming to Illinois, except the statement in Hansen's affidavit, which was not disputed by either the defendant Brooks, (App. 31) or his witness Arnold, (App. 35) that *the defendant* Brooks *requested Hansen to meet him in Illinois* on June 11 "*for the purpose* of discussing and negotiating such proposed contract for the sale of his stock." (App. 45)

OPINION OF THE COURT OF APPEALS

The Court of Appeals in its opinion refers to section 17(1)(a) of the Illinois Civil Practice Act,[1] of which section only the act specified in sub paragraph (a) is pertinent to this case. The court states that "the only question presented by this appeal, as stated by the plaintiffs, is 'did the activity of the defendant Brooks in Illinois on June 11 and June 12, 1958 constitute the transacting of *any* (the court's own italics) of the business out of which this cause of action arose?'" (App. A, page 2a, *infra*) The Court then qualified its above statement by holding that the part of the business which was transacted in the State must be substantial.[2] (App. A, page 2a, *infra*) The Court of Appeals then decided that the language of the statute, *i.e.*, "transaction of any business" within this state

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[1] Chapter 110. § 17. Act submitting to jurisdiction—Process. (1) Any person, whether or not a citizen or resident of this State, who in person or through an agent does any of the acts hereinafter enumerated, thereby submits said person, and, if an individual, his personal representative, to the jurisdiction of the courts of this State as to any cause of action arising from the doing of any of said acts:

(a) The transaction of any business within this State;

(b) The commission of a tortious act within this State;

(c) The ownership, use, or possession of any real estate situated in this State;

(d) Contracting to insure any person, property or risk located within this State at the time of contracting.

[2] Apparently to comply with this Court's statement in **McGee v. International Life Ins. Co.**, 355 U.S. 220 at 223 that "it is sufficient for purposes of due process that the suit was based on a contract which had substantial connection with that state."

is as broad as constitutional authority will permit," so that each case poses a problem of statutory construction, "within the constitutional framework" and its application to the factual background of each individual case. The Court of Appeals then decided that the facts in this case would take service on the defendant outside of the "constitutional framework" (*i.e.* the due process clause of the constitution) because:

> Some of the business transacted which resulted in the final contract sued upon took place outside of Illinois, and Illinois was selected by the defendant as the place to transact the business which was actually transacted here on account of its "convenience." So that the business which was actually transacted in Illinois was not "*with any intention*" by the defendant of invoking "any of the benefits or protection of the laws of the State of Illinois." That since defendant's "purpose" or "intention" in coming into Illinois was "not for the *purpose* of negotiating with the plaintiff but rather to attend a convention," the business transacted by the defendant in Illinois was "wholly fortuitous" and did, therefore, not establish a "minimal contact" with Illinois (App. A, page 6a-7a, *infra*). This the Court of Appeals held even though this suit would never have arisen except for the contract which was negotiated and executed by the defendant in Illinois, and even though it was undisputed in this case that this cause of action could not be maintained without alleging in the complaint and proving on the trial the agreement which was negotiated and executed by the defendant in Illinois.

Following the construction of the Supreme Court of Illinois in **Nelson v. Miller**, 11 Ill. 378 at 389 holding the Illinois Act to be constitutional, and stating that the statute reflects "a conscious purpose to assert jurisdiction over non resident defendants to the extent permitted by the due-process clause."

REASONS FOR GRANTING THE WRIT

I.

THE FACT THAT THE DEFENDANT SELECTED ILLINOIS AS THE PLACE TO TRANSACT BUSINESS FOR THE REASON OF *CONVENIENCE*, i. e. BECAUSE HE ALSO DESIRED TO ATTEND A CONVENTION IN ILLINOIS, DOES NOT CAUSE HIS PRESENCE IN ILLINOIS TO BE "WHOLLY FORTUITOUS", AND THEREFORE UNDER THE "CONSTITUTIONAL FRAMEWORK" (i.e. THE DUE PROCESS CLAUSE) TO EXEMPT THE TRANSACTION OF SUCH BUSINESS FROM THE PROVISIONS OF THE NON RESIDENT JURISDICTIONAL STATUTE.

A. A Defendant Who *Actually* Transacts Business in Illinois, Pursuant to His Own Selection of Illinois as the Place to Transact Such Business, Does Not Fail to "*Have Any Intention* of Invoking Any of the Benefits and Protection of the Laws of the State of Illinois" Because He Also "*Intended*" to Attend a Convention in Illinois, and His Presence in the State in Such Event Is Not "Wholly Fortuitous", So As to Exempt Him from the Provisions of the Illinois Statute.

Where one actually transacts business within the state, he does not cease to have "*any intention* of invoking any of the benefits or protections of the laws of the State of Illinois" merely because he also planned to do something else while he was in the state. If a non resident defend-

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(Continued)

See also **Henry R. Jahn & Son v. Superior Court**, 49 Cal. 2d 855, 858-9, 323 P.2d 437, 439: "Whatever limitation it (the California Statute) imposes is equivalent to that of the due process clause. '(D)oing business' within the meaning of section 411 of the Code of Civil Procedure is synonymous with the power of the state to subject foreign corporations to local process."

ant in Illinois, or any of the various other states having a comparable non resident jurisdictional statute, were to testify that before going into the state he mentally had an "intention" to attend a convention, or to attend a ball game, or to have his wife see Marshall Field's store, or do any one of many other things in the state, it would be almost impossible to disprove his asserted mental attitude or "intention" or "purpose" before he came into the state. Under the decision in this case, his presence in the state under such circumstances would be "wholly fortuitous".

Under this decision, if Illinois, or any of the other states having a comparable statute, were selected by defendant as a place to transact business because of such "convenience", it would clothe the non resident defendant with almost complete immunity to the operation of any non resident jurisdictional statute. The decision of this court in *International Shoe Co.* v. *Washington*, 326 U. S. 310, and the statutes of many states passed pursuant thereto, would, under this decision of the Court of Appeals, now have a new limitation, which would render that decision of this Court and statutes of various states passed pursuant thereto practically meaningless.

While the specific limitations which the decision in this case have placed upon this Court's decisions and statutes passed pursuant thereto have, we believe, never before been suggested in any reported case, the decision in this case is contrary to the decisions of the highest courts in three states, which have held that a non resident enjoys the benefits or protections of the laws of a state *when he actually conducts business therein*. Under those decisions, no independent evidence of "*any intention* of invoking any of the benefits or protections of the

laws of the state of Illinois" is necessary, other than the fact of *actually* conducting business therein.

The highest courts of three states have decided the above principle contrary to the decision in this case, and we know of no case which sustains this decision.

In *Nelson* v. *Miller*, 11 Ill.2d 378 at 390, 391 the court said: "*While he was here*, the employee and *the defendant enjoyed* the benefit and protection of the laws of Illinois, including the right to resort to our courts." (our emphasis)

In *Smyth* v. *Twin State Improvement Corp.*, 116 Vt. 569 at 574, the court said "the non resident has *had the protection* of the state's laws *while acting therein*." At 575 the court said "if a foreign corporation voluntarily *elects to act here*, it should be answerable here and under our laws. The consequence imputed to it lie within its own control, since *it need not act* within the state at all, unless it so desires." (our emphasis)

In *Compania de Astral* v. *Boston Metals Co.*, 205 Md. 237, at 261, 262 the court said: "they (*the defendants' activities* in Maryland) add up to considerable contact with this State and considerable reliance upon its laws and the protection which they afforded."

II.

BUSINESS TRANSACTED IN A STATE HAS A "*SUBSTANTIAL CONNECTION*" WITH THAT STATE, IF THE BUSINESS SO TRANSACTED IS OF SUCH IMPORTANCE THAT THE SUIT WOULD NOT HAVE BEEN BROUGHT IF SUCH BUSINESS HAD NOT BEEN TRANSACTED, AND IF SUCH BUSINESS MUST BE ALLEGED IN THE COMPLAINT AND PROVED AT THE TRIAL IN ORDER TO MAINTAIN THE CAUSE OF ACTION.

While *the plaintiff* Kaye-Martin had contacts or transacted business in New York, his "*minimum* contacts with

Illinois" and the jurisdiction of Illinois over him is not a question in this suit. The question here is whether *the defendant* Brooks transacted business in Illinois sufficiently *substantial* to constitute a "minimum contact" with Illinois on his part. All of the business *the defendant transacted* with the plaintiff Kaye-Martin in bringing about the contract sued upon was done by the defendant while he was either in Illinois or in Texas. The main contract constituting most of the ultimate terms of the contract sued upon was negotiated and executed and signed by the defendant Brooks in Illinois. Plaintiffs have at all times asserted, and it has at no time been denied, that these causes of action could not have been maintained without plaintiffs' alleging in the complaint and proving on the trial the contracts that were negotiated and executed by the defendant in Illinois.

The decision of the court in this case is in direct conflict with the decision of the U. S. Court of Appeals, First Circuit.

In *W. H. Elliott & Sons Co.* v. *Nuodex Products Co.* 243 F. 2d 116, 1957, at 121 the U. S. Court of Appeals, First Circuit, in passing upon the New Hampshire Statute giving New Hampshire jurisdiction over a non resident defendant "doing business" within the state, decided that the business transacted in that state (*i. e.* registration of defendant's product in that state as required by law) had a substantial connection with that state *because*, if the defendant had not registered its product, the sale in question could not have been made, and the suit would not have been brought. It would be necessary to allege and prove what was done in the state in order to maintain the cause of action. At page 121, the court said that *the sale in that case would not have been made and the suit would not have arisen* had such

activity of the defendant within the state not taken place. The facts in our case, as stated in the opinion of the Court of Appeals, show that this suit would never have arisen had the defendant not negotiated and executed the contract of June 10 in Illinois, and this cause of action could not be maintained without alleging in the complaint and proving at the trial the contract which the defendant Brooks negotiated and executed in Illinois, so that this opinion is in conflict with that of the U. S. Court of Appeals, First Circuit.

CONCLUSION.

The new and substantial limitations which the decision of the Court of Appeals in this case have placed upon the decisions of this Court and also upon statutes of various states passed pursuant thereto are in conflict with the decision of the U. S. Court of Appeals, First Circuit, and the highest Courts of Appeal of several states. We know of no decision supporting the position of the Court of Appeals in this case, in establishing those new limitations.

We respectfully urge that this Court grant this petition for certiorari in order to remove the uncertainty which this decision has created.

Respectfully submitted,

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APPENDIX A.

In the
UNITED STATES COURT OF APPEALS
For the Seventh Circuit

SEPTEMBER TERM 1958 — APRIL SESSION 1959

No. 12570
ALLEN C. KAYE-MARTIN and
HARRY M. HANSEN,
Plaintiffs-Appellants,
v.
PIERCE P. BROOKS,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

June 15, 1959

Before SCHNACKENBERG, PARKINSON and KNOCH, *Circuit Judges*.

PARKINSON, *Circuit Judge*. Plaintiffs Allen C. Kaye-Martin and Harry M. Hansen, both residents of New York, filed this *in personam* action against the defendant Pierce P. Brooks, a resident of Arkansas, and others in the Superior Court of Cook County, Illinois. Summons was served on Brooks in Dallas, Texas. On motion of defendants, diversity of citizenship being self-evident, removal to the United States District Court ensued.

The defendants then moved to quash service and dismiss. On motion of plaintiffs, all defendants except Brooks were dismissed out of the case and an amended complaint was filed with Brooks as the sole defendant. Brooks moved to quash the summons and return and to dismiss for lack of jurisdiction over his person for the

and Kaye-Martin then and there entered into, signed and executed a written agreement reading as follows:

"THIS AGREEMENT, between Dr. PIERCE P. BROOKS and ALLEN C. KAYE-MARTIN — each acting for account of themselves and their Associates —provides for amendments and corrections to former agreements, signed by both parties, transmitted to each other and the First Southwest Company, of Dallas, Texas, by and through HARRY M. HANSEN

"SAID FORMER AGREEMENTS are identified as follows:

"1. Letter to Allen C. Kaye-Martin, dated June 10th, 1958, with acceptance and penned corrections made thereon by Dr. Brooks; and

"2. Telegram to Harry M. Hansen, dated June 11th, 1958, from Allen C. Kaye-Martin, accepting above mentioned letter with acceptance and corrections made thereon by Dr. Brooks; and

"3. Letter to — and acceptance by — Allen C. Kaye-Martin, dated June 16th, 1958, providing for the method and terms of the purchase and sale of subject 10,000 shares of the capital stock of the NATIONAL BANKERS LIFE INSURANCE COMPANY, of Dallas, Texas; and

"4. Letter to FIRST SOUTHWEST COMPANY, of Dallas, Texas, dated June 19th, 1958, enclosing photostats of the foregoing 'letter-agreements', as a guide for their performances as Escrowee in subject matter.

"NOW, THEREFORE, DR. PIERCE P. BROOKS and ALLEN C. KAYE-MARTIN—each acting for account of themselves and their Associates—agree to certain amendments and corrections to the foregoing 'letter-agreements' written and agreed to. The 'certain' amendments and corrections are as follows:

"A. Dr. Brooks agrees to replace, with CASH deposited in the Company's Treasury, the

Book Value of all Mortgage, Stock or other Investments in the Company's portfolio, declared to be 'Non-Admitted Assets' by the Insurance Commissioner of the State of Texas, at the conclusion of the hearing—in the Insurance Department Office in Austin, Texas—set for July 15th, 1958.

"B. Dr. Brooks agrees to reduce the sale price of all 10,000 shares of subject stock, from $600.00 to $500.00 per share.

"C. Allen C. Kaye-Martin and Dr. Pierce P. Brooks both agree to consummate this purchase and sale at the office of the Escrowee on or before July 10th, 1958.

"D. This agreement as modified by above paragraphs A., B., and C. will expire on the 10th day of July, 1958.

"The above specific corrections and amendments are hereby accepted and agreed to in Dallas, Texas, this 3rd Day of July, 1958."

Brooks also "Okayed" a letter for the payment of a commission to Hansen of 5% on whatever the gross purchase and sale price of the stock might be instead of $600 a share.

In this action Kaye-Martin seeks damages for breach of the contract of July 3, 1958 alleging that the "fair cash market value of said stock, on and after July 3rd, 1958 was and is Seven Hundred ($700.00) Dollars per share;" and Hansen seeks to recover his commission of 5% on the sale of Brooks' stock under his contract of July 3, 1958 at $500 a share instead of $600, both contracts having been executed in Dallas, Texas.

Considering all that is to be found in the decisions anent the evolution of service on non-resident defendants in *in personam* actions from *Pennoyer* v. *Neff*, 1877, 95 U.S. 714, through *International Shoe Co.* v. *Washington*, 1945, 326 U.S. 310; *McGee* v. *International Life Ins. Co.*, 1957, 355 U.S. 220; and *Hanson* v. *Denckla*, 1958, 357 U.S. 235,

further treatment here could serve no purpose other than to unnecessarily extend this opinion. However, it is now the established law that "it is essential in each case that there be some act by which the defendant purposefully avails [himself] of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws";[2] and that "he have certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice'".[3]

Although the phrase "transaction of any business within this State" is as bread as constitutional authority will permit it poses a problem of statutory construction within the constitutional framework and its application to the factual background of each individual case.

Thus the question here is whether the meeting in Chicago constituted sufficient contact with the State of Illinois to justify Illinois in asserting jurisdiction *in personam* over Brooks. In view of the fact that the contract had its origin in New York, was actually executed in final form in Texas and that Chicago was selected as a meeting site for no reason other than convenience, our answer must be in the negative. To hold otherwise would not only offend "traditional notions of fair play and substantial justice", and herald the "demise of all restrictions on the personal jurisdiction of state courts", but would subvert §17(3) of the Illinois Civil Practice Act which specifically limits the operation of the Act to causes of action arising solely from acts performed within the State of Illinois.[4]

Brooks did not come to Illinois for the purpose of negotiating with Hansen or Kaye-Martin but rather to attend a convention. Moreover, no party to this action, insofar

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[2] **Hanson v. Denckla, 357 U.S. 235, 253.**

[3] **International Shoe Co. v. Washington, 326 U.S. 310, 316.**

[4] **§17(3) Only causes of action arising from acts enumerated herein may be asserted against a defendant in an action in which jurisdiction over him is based upon this section.**

as the record shows, had any intention of invoking any of the benefits or protections of the laws of the State of Illinois. The fact that some of the events leading up to the execution of the final contracts in Dallas, Texas occurred in Chicago was wholly fortuitous.

On this record as it comes to us it is clear that those "minimal contacts" which are an absolute prerequisite to personal jurisdiction of the courts of Illinois over a defendant are totally lacking as to Brooks.

The District Court correctly held that service on Brooks was invalid and that it lacked jurisdiction over his person.

JUDGMENT AFFIRMED.

UNITED STATES COURT OF APPEALS

For the Seventh Circuit
Chicago 10, Illinois

Monday, June 15, 1959

Before

Hon. Elmer J. Schnackenberg, Circuit Judge
Hon. W. Lynn Parkinson, Circuit Judge
Hon. Win. G. Knoch, Circuit Judge

Allen C. Kaye-Martin and Harry M. Hansen Plaintiffs-Appellants vs. Pierce P. Brooks Defendant-Appellee	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 12570

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby Affirmed, in accordance with the opinion of this Court filed this day, with costs.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago 10, Illinois

Monday, July 13, 1959

Before

Hon. Elmer J. Schnackenberg, Circuit Judge
Hon. W. Lynn Parkinson, Circuit Judge
Hon. Wm. G. Knoch, Circuit Judge

Allen C. Kaye-Martin and Harry M. Hansen Plaintiffs-Appellants No. 12570 vs. Pierce P. Brooks Defendant-Appellee	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

It is ordered by the Court that the petition for a rehearing of this cause be, and the same is hereby, Denied.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago 10, Illinois.

I, Kenneth J. Carrick, Clerk of the United States Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing ..... pages contain a true copy of the Appendix, filed March 11, 1959, the Opinion of the Court filed June 15, 1959, the Judgment, entered June 15, 1959, and the order denying Petition for Rehearing entered July 13, 1959, in

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Cause No. 12570

— —

Allen C. Kaye-Martin and Harry M. Hansen
Plaintiffs-Appellants

vs.

Pierce P. Brooks
Defendant-Appellee

---

as the same remains upon the files and records of the United States Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Court of Appeals for the Seventh Circuit, at the City of Chicago, this 17th day of July A. D. 1959.

s/ Kenneth J. Carrick
Clerk of the United States Court of Appeals
for the Seventh Circuit.

By: /s/ R. Hays Blanchard
Chief Deputy Clerk

(Seal)

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Office Supreme Court, U.S.
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AUG 28 1959
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959.

No. 256

ALLEN C. KAYE MARTIN and
HARRY M. HANSEN,

Petitioners,

vs.

PIERCE P. BROOKS,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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Chicago 2, Illinois

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reason that he was a non-resident of Illinois and the causes of action, if any, asserted in the amended complaint did not arise from the transaction of any business within the State of Illinois whereby he submitted himself to the jurisdiction of the courts of Illinois under the Illinois Civil Practice Act[1] which reads, in relevant part, as follows:

> "§17. Act submitting to jurisdiction—
> Process
>
> (1) Any person, whether or not a citizen or resident of this State, who in person or through an agent does any of the acts hereinafter enumerated, thereby submits said person, and, if an individual, his personal representative, to the jurisdiction of the courts of this State as to any cause of action arising from the doing of any of said acts:
>
> (a) The transaction of any business within this State;".

The District Court granted the motion and dismissed the action. This appeal followed.

The only question presented by this appeal, as stated by the plaintiffs, is as follows:

> "Did the activity of the defendant Brooks in Illinois on June 11 and June 12, 1958 constitute the transacting of *any* of the business out of which this cause of action arose?"

The plaintiffs concede that the "transaction of any business", as used in §17(1)(a) of the Act, means some substantial business out of which the cause of action arose.

The relevant facts are as follows: Hansen, a broker in New York City, was there informed by Brooks that Brooks wished to sell his controlling stock in National Bankers Life Insurance Company of Dallas, Texas for $600 a share and would pay Hansen a 5% commission for negotiating such a sale. Hansen prepared an exclusive broker's contract for Brooks' signature in New York but Brooks refused to sign.

---

[1] Ill. Rev. Stat. 1957, ch. 110, pars. 16 and 17.

About six months thereafter, on June 7, 1958, Hansen, from New York, called Brooks in California informing him that he thought he might have a purchaser for the stock and wanted to see him to discuss the matter. Arrangements were made to meet at the Conrad Hilton Hotel in Chicago, Illinois where Brooks was going to attend a convention.

Hansen conferred with Kaye-Martin in New York City on June 10, 1958 and the following day arrived in Chicago and met Brooks. Hansen showed Brooks a copy of a letter from Hansen to Kaye-Martin in New York wherein Hansen summarized four provisions bearing on the proposed stock sale which might form the basis for a future "formal agreement." Brooks made two changes in the letter in his own handwriting and wrote at the bottom as follows:

> "June 11, 1958. Accepted by me provided it's accepted and escrow made within 30 days; otherwise this sales offer is cancelled—Pierce P. Brooks."

At Hansen's request, Brooks penned a memorandum as follows:

> "Harry Hansen—Commission to you—5% at Price of 600.00 Per Share—is okay—
>
> PPB".

Thereupon Hansen telephoned Kaye-Martin in New York telling him of Brooks' suggested changes. Kaye-Martin conferred with his associates and wired Hansen. On June 12, 1958, Hansen delivered to Brooks the telegram reading as follows:

> "YOUR SIGNED AGREEMENT WITH DR BROOKS IS HEREBY ACCEPTED WITH CORRECTIONS AS READ TO ME OVER THE TELEPHONE TONIGHT—".

Thereafter, on July 3, 1958, the parties met in Dallas, Texas for the purpose of completing negotiations. Brooks

INDEX

	PAGE
Opinions Below	1
Illinois Statute Construed	2
Question Presented	3
Statement of the Case	3
Argument:	
I—Certiorari should be denied since the decision sought to be reviewed turns entirely upon an appreciation of the particular facts of the case, which facts have been carefully analyzed by both the United States District Court for the Northern District of Illinois, Eastern Division, and the United States Court of Appeals for the Seventh Circuit	9
II—Certiorari should be denied since the Court of Appeals has, in a diversity case, construed an Illinois procedural statute in a manner wholly consistent with applicable decisions of the Supreme Court of Illinois	10
III—Certiorari should be denied since the decision of the Court of Appeals is in complete accord with applicable decisions of this Court	13
IV—Certiorari should be denied since the decision below is not in conflict with the decision of another Court of Appeals or with the decision of a state court of last resort on the same subject matter	15
Conclusion	17

List Of Authorities Cited.

Cases.

PAGE

Berlemann v. Superior Distributing Company, 12 Ill. 2d 386, 146 N.E. 2d 41 (1957) 12

Compania De Astral S.A. v. Boston Metals Co., 205 Md. 237, 107 A. 2d 357, 108 A. 2d 372 (1954), certiorari denied 348 U.S. 943 (1955) 10

Grobark v. Addo Machine Co., 16 Ill. 2d 426, 158 N.E. 2d 73 (1959) 11, 12, 13

Hanson v. Denckla, 357 U.S. 235 (1958) 14, 15

International Shoe Co. v. Washington, 326 U.S. 310 (1945) 13, 14

McGee v. International Life Ins. Co., 355 U.S. 220 (1957) 13, 15, 16

Nelson v. Miller, 11 Ill. 2d 378, 143 N.E. 2d 673 (1957) 10, 13, 14

Orton v. Woods Oil and Gas Co., 249 F. 2d 198 (CA 7, 1957) 12

Statutes.

Illinois Revised Statutes, 1957 Edition, Chapter 110, Section 17 2

Other Authorities.

Smith-Hurd Illinois Annotated Statutes, Chapter 110, Section 17, 1958 Cumulative Annual Pocket Part 2

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959.

No. 256

ALLEN C. KAYE-MARTIN and
HARRY M. HANSEN,

Petitioners,

vs.

PIERCE P. BROOKS,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Respondent, Pierce P. Brooks, respectfully submits that the petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in the above cause should be denied for the reasons hereinafter set forth.

OPINIONS BELOW.

A transcript of the oral opinion of the United States District Court for the Northern District of Illinois, Eastern Division, rendered January 7, 1959, appears in the printed appendix forming part of the record transmitted

to this Court. (App. 48). This opinion was not otherwise reported.

The opinion of the United States Court of Appeals for the Seventh Circuit, rendered June 15, 1959, affirming the judgment of the District Court, is reported at 267 F.2d 394.

STATUTE CONSTRUED.

This case involves the construction and application of Section 17 of the Illinois Civil Practice Act (Illinois Revised Statutes, 1957 Edition, Chapter 110, Section 17) with particular reference to sub-sections 17(1)(a) and 17(3) thereof. Said statute provides as follows:

"§17. Act submitting to jurisdiction—Process.

(1) Any person, whether or not a citizen or resident of this State, who in person or through an agent does any of the acts hereinafter enumerated, thereby submits said person, and, if an individual, his personal representative, to the jurisdiction of the courts of this State as to any cause of action arising from the doing of any of said acts:

(a) The transaction of any business within this State;

(b) The commission of a tortious act within this State;

(c) The ownership, use, or possession of any real estate situated in this State;

(d) Contracting to insure any person, property or risk located within this State at the time of contracting.

(2) Service of process upon any person who is subject to the jurisdiction of the courts of this State as provided in this section, may be made by personally serving the summons upon the defendant or

side this State, as provided in this Act, with the same force and effect as though summons had been personally served within this State.

(3) Only causes of action arising from acts enumerated herein may be asserted against a defendant in an action in which jurisdiction over him is based upon this section.

(4) Nothing herein contained limits or affects the right to serve any process in any other manner now or hereafter provided by law. As amended by act approved July 19, 1955. I. 1955, p. 2238."

QUESTION PRESENTED.

The sole question presented for review is whether the Court of Appeals (in affirming the judgment of the District Court in a case removed from a state court on grounds of diversity of citizenship) properly held that respondent Brooks had not, on the facts disclosed by the pleadings, documentary exhibits, and affidavits, engaged in the transaction of any business in the State of Illinois out of which the alleged causes of action arose, within the meaning of Section 17 of the Illinois Civil Practice Act.

STATEMENT OF THE CASE.

The statement of the case contained in the petition for writ of certiorari deviates, by way of omission and by way of factual interpretation, from the findings of fact concurred in by both the District Court and the Court of Appeals.

The relevant facts, standing uncontroverted in the record, may be summarized as follows:

Petitioners, Kaye-Martin and Hansen, are residents the State of New York, while respondent Brooks is resident of the State of Arkansas. (App. 2). On about December 4, 1957, Hansen, a broker in New Y City, was there informed by Brooks that Brooks desir to sell certain stock, representing controlling interest National Bankers Life Insurance Company of Dall Texas, for $600.00 per share and would pay Hansen 5% commission for negotiating such a sale. Hansen pr pared an exclusive broker's contract for Brooks' sign ture in New York, but Brooks refused to sign the exc sive. (App. 44).

About six months later, on June 7, 1958, Hansen, w was in New York, telephoned Brooks in California forming him that he might have a purchaser for t stock and wanted to see Brooks to discuss the matte (App. 45). They arranged to meet at the Conrad Hil Hotel in Chicago, Illinois, where Brooks was going attend a meeting of the National Association of Insuran Commissioners. (App. 32).

Hansen conferred with Kaye-Martin in New York C on June 10, 1958. (App. 16). The following day arrived in Chicago and met Brooks. (App. 33). H showed Brooks a copy of a letter dated June 10, 19 from Hansen to Kaye-Martin in New York City whic Hansen summarized four provisions bearing on the pr posed stock sale which might form the basis for a futur "formal agreement." (App. 16, 33, 45). Brooks mad two changes in the letter in his own handwriting a wrote at the bottom:

> "June 11, 1958. Accepted by me provided accepted and escrow made within thirty days; othe wise this sales offer is cancelled—Pierce P. Brooks (App. 17, 33, 46).

At Hansen's request Brooks penned a memorandum on a piece of hotel stationery as follows:

> "Harry Hansen—Commission to you—5% at Price of 600.00 Per Share—is okay—PPB." (App. 24, 33, 45).

Hansen thereupon telephoned Kaye-Martin in New York City, telling him of Brooks' suggested changes. Kaye-Martin, after conferring with his associates, filed a telegram in New York City on June 11, 1958, for transmittal and delivery to Hansen at the Congress Hotel in Chicago. (App. 33, 46). This telegram read as follows:

> "Your signed agreement with Dr. Brooks is hereby accepted with corrections as read to me over the telephone tonight. Allen C. Kaye-Martin." (App. 18)

Hansen exhibited this telegram to Brooks on June 12, 1958. (App. 33, 46).

Thereafter, on July 3, 1958, Kaye-Martin, Hansen and Brooks met in Dallas, Texas, for the purpose of completing negotiations. Brooks and Kaye-Martin then and there entered into and executed a written agreement reading as follows:

> "THIS AGREEMENT, between DR. PIERCE P. BROOKS and ALLEN C. KAYE-MARTIN—each acting for account of themselves and their Associates—provides for amendments and corrections to former agreements, signed by both parties, transmitted to each other and the First Southwest Company of Dallas, Texas, by and through HARRY M. HANSEN.
>
> "SAID FORMER AGREEMENTS are identified as follows:
>
> "1. Letter to Allen C. Kaye-Martin, dated June 10th, 1958, with acceptance and penned corrections made thereon by Dr. Brooks; and

"2. Telegram to Harry M. Hansen, dated June 11th, 1958, from Allen C. Kaye-Martin, accepting above mentioned letter with acceptance and corrections made thereon by Dr. Brooks; and

"3. Letter to—and acceptance by—Allen C. Kaye-Martin, dated June 16th, 1958, providing for the method and terms of the purchase and sale of subject 10,000 shares of the capital stock of the NATIONAL BANKERS LIFE INSURANCE COMPANY, of Dallas, Texas; and

"4. Letter to FIRST SOUTHWEST COMPANY of Dallas, Texas, dated June 19th, 1958, enclosing photostats of the foregoing 'letter-agreements', as a guide for their performance as Escrowee in subject matter.

"NOW, THEREFORE, DR. PIERCE P. BROOKS and ALLEN C. KAYE-MARTIN—each acting for account of themselves and their Associates—agree to certain amendments and corrections to the foregoing 'letter-agreements' written and agreed to. The 'certain' amendments and corrections are as follows:

"A. Dr. Brooks agrees to replace, with CASH, deposited in the Company's Treasury, the Book Value of all Mortgage, Stock or other Investments in the Company's portfolio, declared to be 'Non-Admitted Assets' by the Insurance Commissioner of the State of Texas, at the conclusion of the hearing—in the Insurance Department Office in Austin, Texas—set for July 15th, 1958.

"B. Dr. Brooks agrees to reduce the sale price of all 10,000 shares of subject stock, from $600.00 to $500.00 per share.

"C. Allen C. Kaye-Martin and Dr. Pierce P. Brooks both agree to consummate this purchase and sale at the office of the Escrowee on or before July 10th, 1958.

"D. This agreement as modified by above paragraphs A., B., and C. will expire on the 10th day of July, 1958.

"The above specific corrections and amendments are hereby accepted and agreed to in Dallas, Texas, this 3rd day of July, 1958." (App. 5, 23, 34).

Brooks also "okayed" a letter for the payment of a commission to Hansen of 5% of whatever the gross purchase and sale price of the stock might be instead of $600.00 per share. (App. 25, 34).

Subsequently the parties met in New York City, where, it is alleged, they mutually agreed to execute an amendment to the agreement of July 3, 1958, appointing Irving Trust Company of New York City as escrow agent. It is alleged that respondent Brooks failed to consummate this arrangement and conveyed the stock in question to other persons. (App. 9).

This action was thereupon commenced in the Superior Court of Cook County, Illinois, by petitioners and two additional plaintiffs. (App. 1). None of the four plaintiffs was a citizen or resident of the State of Illinois (App. 2), and none of the fifteen original defendants (App. 31, 37) was a citizen or resident of the State of Illinois. In said action Kaye-Martin sought damages for breach of the contract of July 3, 1958, alleging that the "fair cash market value of said stock, on and after July 3rd, 1958, was and is Seven Hundred ($700.00) Dollars per share" (App. 10); and Hansen sought to recover his commission of 5% on the sale of Brooks' stock under his contract of July 3, 1958, based on a sales price of $500.00 per share instead of $600.00 per share (App. 14), both contracts having been executed in Dallas, Texas (App. 23; 25).

Personal service of process was had on Brooks in Dallas, Texas. The action was removed to the United States District Court for the Northern District of Illinois, Eastern Division, on grounds of diversity of citizenship. (App. 1). Fourteen co-defendants were voluntarily dismissed on motion of plaintiffs in that Court (App. 1), and one of the plaintiffs, Jack Yarmove, requested and was granted leave to withdraw from the action prior to the District Court's determination of the issues. (App. 47). An amended complaint was filed in which Brooks was designated as the sole defendant. (App. 2).

Brooks moved to quash summons and return of service of summons and to dismiss the action for lack of jurisdiction over his person, on grounds, *inter alia*, that he had not transacted any business in the State of Illinois within the meaning of Section 17(1)(a) and that the causes of action asserted did not "arise from" such activity in the State of Illinois within the meaning of Section 17(3) of the Illinois Civil Practice Act. (App. 26). The District Court granted this motion and entered an order of dismissal. (App. 47). An appeal was taken to the United States Court of Appeals for the Seventh Circuit, one of the original plaintiffs, John S. Leahy, failing to join in the appeal. (App. 64). The Court of Appeals affirmed the judgment of the District Court on June 15, 1959, and denied petition for rehearing on July 13, 1959. (App. A, 8a, 9a).

ARGUMENT.

I.

CERTIORARI SHOULD BE DENIED SINCE THE DECISION SOUGHT TO BE REVIEWED TURNS ENTIRELY UPON AN APPRECIATION OF THE PARTICULAR FACTS OF THE CASE, WHICH FACTS HAVE BEEN CAREFULLY ANALYZED BY BOTH THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION, AND THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Both the District Court and the Court of Appeals have painstakingly examined the various pleadings filed in this action, the eight documentary exhibits attached to the amended complaint, and the four affidavits of fact submitted on behalf of the respective parties. That this examination was thorough is apparent on the face of the opinions rendered by the two lower courts, which quote copiously from the record.

On the basis of their analysis of the fact situation thus disclosed, both the District Court and the Court of Appeals have found that the isolated, limited, overnight activity of the respondent Brooks in the State of Illinois did not constitute "the transaction of any business" in Illinois within the meaning of Section 17(1)(a) of the Illinois Civil Practice Act.

It has long been the policy of this Court to decline review, by way of certiorari, of decisions which turn upon the facts of an individual case, where the governing facts have been determined and concurred in by two lower courts. It is submitted that the record in this

case discloses no circumstances necessitating a departure from that well-settled policy. If this Court were to grant certiorari in this case to decide whether the facts of the case, already passed upon by two lower courts, fall within or without the purview of the Illinois statute, it is difficult to see why it would not be called upon to do so with respect to each specific fact situation arising in the future in each such individual case.

II.

CERTIORARI SHOULD BE DENIED SINCE THE COURT OF APPEALS HAS, IN A DIVERSITY CASE, CONSTRUED AN ILLINOIS PROCEDURAL STATUTE IN A MANNER WHOLLY CONSISTENT WITH APPLICABLE DECISIONS OF THE SUPREME COURT OF ILLINOIS.

The Supreme Court of Illinois has sustained the constitutionality of Section 17 of the Illinois Civil Practice Act, interpreting it to reflect a legislative purpose to assert jurisdiction over nonresident defendants "to the extent permitted by the due process clause [of the Federal Constitution]." *Nelson* v. *Miller*, 11 Ill. 2d 378, 389; 143 N.E. 2d 673, 679 (1957). While the Court was there specifically concerned with Section 17(1)(b) which confers *in personam* jurisdiction in the event of "the commission of a tortious act within this State", and not with Section 17(1)(a), the Court was nevertheless careful to point out that the proper basis in *any* case for the assertion by a state of *in personam* jurisdiction over a nonresident

> "* * * is to be found in the legitimate interest of the State in providing redress in its courts against persons who, having *substantial* contacts with the State, incur obligations *to those entitled to the State's protection*." (Emphasis supplied.)

Section 17(1)(a) of the Illinois Civil Practice Act was first construed and applied by the Supreme Court of Illinois in *Grobark v. Addo Machine Company*, 16 Ill. 2d 426, 158 N.E. 2d 73 (1959), the court having granted leave to appeal from a decision of the Illinois Appellate Court upholding the quashing of extra-territorial service of summons on a nonresident defendant. Notwithstanding a factual situation disclosing greater contacts, ties and relations between the nonresident defendant and the State of Illinois than are present in the instant case, the Supreme Court of Illinois affirmed the decision of the Illinois Appellate Court, holding that the nexus between the nonresident defendant and the state of the forum was not sufficiently substantial to render applicable the provisions of Section 17 of the Illinois Civil Practice Act.[1]

The Court in *Grobark* took pains to emphasize that the case did not *directly* present a constitutional question and that a constitutional question will not be *directly* raised in any given case unless the state erroneously assumes jurisdiction over the person of the nonresident defendant in violation of the due process clause.

> "While the constitutional question is always present in determining whether a state, consistent with due process, can enter an *in personam* judgment against a nonresident defendant, nevertheless it is

[1] See also **Orton v. Woods Oil and Gas Co., 249 F. 2d 198 (CA 7, 1957)** which, while not a decision of a state court of last resort, has been characterized at Page 9 of the 1958 Cumulative Annual Pocket Part, supplementing Chapter 110, Section 17, Smith-Hurd Illinois Annotated Statutes, as "a well reasoned opinion in which the authorities and text comments respecting Section 17 were carefully reviewed" and in which case an order quashing extra-territorial service of process on a nonresident was affirmed, despite greater contact, qualitatively and quantitatively, by the defendant with the State of Illinois than was present in the instant case.

> important to avoid placing the cart before the horse. If, for example, there are no minimum contacts with the State in a particular case, it will be unnecessary to decide whether the State, consistent with due process, can assume jurisdiction, unless the State assumes jurisdiction erroneously, and thereby violates due process." *Grobark* v. *Addo Machine Company*, 16 Ill. 2d 426, 431; 158 N.E. 2d 73, 76.

On one occasion prior to *Grobark*, an attempt was made to take a direct appeal to the Supreme Court of Illinois from a trial court order allowing a nonresident defendant's motion to quash extra-territorial service of process grounded on Section 17(1)(a). Illinois law permits direct appeal to the Supreme Court of Illinois as a matter of right where the validity and constitutionality, as opposed to the mere construction, of a statute is involved. On that occasion, in *Berlemann* v. *Superior Distributing Company*, 12 Ill. 2d 386, 146 N.E. 2d 41 (1957), the Supreme Court of Illinois held that only the construction and application of Section 17(1)(a) were directly involved, not its validity or constitutionality. Accordingly, the court did not have jurisdiction on direct appeal and ordered the cause transferred to the Illinois Appellate Court.

It is apparent from the cases cited above that the District Court and the Court of Appeals in the instant case have done nothing more than to construe and apply an Illinois procedural statute in the light of the particular facts presented, and that they have done so in a manner wholly consistent with applicable Illinois law. No constitutional question is directly presented. As the Court of Appeals notes in its opinion, it is only if one were "to hold otherwise" that invasion of the constitutional rights of the *defendant* would become a question for determination. (App. A, 6a).

Petitioners have no constitutional right to try their case in Illinois, any right to ground suit against a non-resident on extra-territorial service of process having been created by the Illinois Legislature on terms and conditions prescribed by it. This would be true, it should be noted, even if petitioners were residents of Illinois, instead of New York, and thus fell "within the ambit of the State's legitimate protective policy." *Nelson* v. *Miller*, 11 Ill. 2d 378, 384; 143 N.E. 2d 673, 676.

Moreover, the Illinois Legislature has, in Section 17(3), limited operation of the statute to causes of action arising solely from acts performed within the State of Illinois. This limitation, the Court of Appeals notes, places the facts of the instant case farther beyond the pale of the application of the statute. (App. A, 6a).

Certiorari would appear to be unwarranted where, as here, the Court of Appeals, in deciding a non-federal question in a diversity case, has properly given effect to the purpose and intent of the Illinois Legislature, as that purpose and intent have been construed and interpreted by decisions of the Supreme Court of Illinois.

III.

CERTIORARI SHOULD BE DENIED SINCE THE DECISION OF THE COURT OF APPEALS IS IN COMPLETE ACCORD WITH APPLICABLE DECISIONS OF THIS COURT.

The petition filed herein does not directly state, as a reason for requesting certiorari, that the decision of the Court of Appeals below is in conflict with applicable decisions of this Court. The Court of Appeals in its opinion expressly cites and purports to follow *International Shoe Co.* v. *Washington*, 326 U.S. 310 (1945), *McGee* v. *International Life Ins. Co.*, 355 U.S. 220 (1957).

and *Hanson v. Denckla*, 357 U.S. 235 (1958). (App. A, 5a, 6a). Petitioners allege, however, on page 2 of their petition that the decision of the Court of Appeals subjects those three decisions of this Court to a "totally new condition and limitation."

It is respectfully submitted that the decision of the Court of Appeals has no such effect. The precise holding below is that the single, isolated meeting in Chicago between Hansen and Brooks was not, in the factual context of this case, a sufficiently substantial contact with the State of Illinois to permit Illinois courts to assert *in personam* jurisdiction over Brooks under Section 17(1)(a) of the Illinois Civil Practice Act. (App. A, 6a).

> "On this record as it comes to us it is clear that those 'minimal contacts' which are an absolute prerequisite to personal jurisdiction of the courts of Illinois over a defendant are totally lacking as to Brooks." (App. A, 7a).

As *one* of the factors giving rise to this holding, the Court of Appeals points to the "wholly fortuitous" nature of the isolated meeting in Illinois between Hansen and Brooks. Brooks journeyed to Illinois to attend a meeting of the National Association of Life Insurance Commissioners, not to transact business with persons within the ambit of the legitimate protective policy of the State of Illinois. His activity in Illinois could hardly be characterized as "systematic" or "continuous"; it was "irregular" and "casual" (*International Shoe Co. v. Washington*, 326 U.S. 310, 320), and was related in only an incidental and preliminary way to the causes of action sued upon, which allegedly arose in Texas or New York at a later date.

Illinois had no "substantial connection" with the contracts ultimately sued upon, nor does Illinois have a

"manifest interest in providing effective means of redress" for petitioners, who are residents of New York. *McGee v. International Life Ins. Co.*, 355 U.S. 220, 223.

The "new and substantial limitations" which petitioners profess to detect in the decision of the Court of Appeals are entirely the product of their misinterpretation of that decision. Petitioners *assume* throughout their petition that respondent has "actually transacted business" in Illinois, when the very determination made by the court below was that respondent had not transacted any business in the State of Illinois out of which the alleged causes of action arose, within the meaning of the Illinois statute. Their conclusions are reached only by begging the very question presented for determination.

IV.

CERTIORARI SHOULD BE DENIED SINCE THE DECISION BELOW IS NOT IN CONFLICT WITH THE DECISION OF ANOTHER COURT OF APPEALS OR WITH THE DECISION OF A STATE COURT OF LAST RESORT ON THE SAME SUBJECT MATTER.

Certiorari has frequently been granted where the decision sought to be reviewed is in *direct* conflict with the decision of another Court of Appeals or with the decision of a state court of last resort passing upon *the same subject matter*. While petitioners claim such conflict at pages 2, 13 and 14 of the petition for writ of certiorari, careful analysis discloses their claim to be without merit.

As has been noted earlier in this brief, the decision of the Court of Appeals in the instant case is wholly consistent with the construction and application given Section 17(1)(a) by the Supreme Court of Illinois in *Grobark v. Addo Machine Co.*, 16 Ill. 2d 426, 158 N.E. 2d 73, the initial case construing and applying that section of the

Illinois Civil Practice Act. It is likewise completely in harmony with *Nelson* v. *Miller*, 11 Ill. 2d 378, 143 N.E. 2d 673, although the court in that instance was confronted with a problem arising under Section 17(1)(b) of the statute, rather than Section 17(1)(a).

No *direct conflict* with respect to the *same subject matter* exists in the other cases cited by petitioners. None of them involves a construction or application of Section 17(1)(a) and Section 17(3) of the Illinois Civil Practice Act. Each of them can be distinguished, not only on the basis of the statutory variables involved, but also on the basis of the factual situations involved. Moreover, in each of them the nonresident defendant had far more substantial contact with the state of the forum than did Brooks in the instant case. See, for example, the discussion of *Compania De Astral, S.A.* v. *Boston Metal Co.*, 205 Md. 237, 107 A. 2d 357, in the District Court's opinion herein. (App. 59).

The instant case presents none of the aspects of direct conflict which were present in *McGee* v. *International Life Ins. Co.*, 355 U.S. 220, where certiorari was granted after Texas courts had refused to give full faith and credit to a judgment of a California court based on extra-territorial service of process. Nor do the circumstances of the instant case bear any resemblance to *Hanson* v. *Denckla*, 357 U.S. 235, where certiorari was granted to review conflicting decisions of courts of the States of Florida and Delaware stemming from the same matter.

CONCLUSION.

Two lower federal courts have held that respondent has not, on the facts disclosed by the record in this case, engaged in the transaction of any business in the State of Illinois, out of which the alleged causes of action arose, within the meaning of Sections 17(1)(a) and 17(3) of the Illinois Civil Practice Act. The decision sought to be reviewed is in complete harmony with applicable decisions of the Supreme Court of Illinois and of this Court, and presents no direct conflict with any decision of any other Court of Appeals or of a state court of last resort passing upon the same subject matter.

Accordingly, respondent respectfully prays that the petition for a writ of certiorari in this cause be denied.

Respectfully submitted,

PAUL B. O'FLAHERTY,
ERWIN M. ARNOLD,
Attorneys for Respondent.

GROBLE, O'FLAHERTY & HAYES,
Of Counsel.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959.

No. 256

ALLEN C. KAYE-MARTIN and
HARRY M. HANSEN,

Petitioners,

vs.

PIERCE P. BROOKS,

Respondent.

REPLY OF PETITIONERS TO BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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There is no issue of fact in this case. The facts are undisputed. The application by the Court of Appeals of asserted legal principles to undisputed facts is the point here in issue. We contend that this application by the Court of asserted law is in conflict with decisions of other U. S. Courts of Appeal and Courts of last resort of several states.

At the outset of its opinion (App. A, page 2a), the Court of Appeals stated that the only question presented by this appeal is as follows:

"Did the activity of the defendant Brooks in Illinois on June 11 and June 12, 1958, constitute the transacting of *any* (the Court's own italics) of the business out of which this cause of action arose?"

The Court of Appeals thereupon did not hold that "*any*" of the business was not in fact transacted in Illinois. It conceded that "*any* of the business" was transacted in Illinois, in stating that such business which was actually and in fact transacted in Illinois was transacted there because of defendant's "*convenience*", *i. e.*, because he wished on the same trip to also do something else in the state, *i.e.*, to attend a convention.

The Court did not hold and, under the admitted facts, could not hold that the defendant did not in fact transact, in Illinois, "*any* of the business out of which this cause of action arose," because the defendant himself had admittedly requested Hansen to meet him in Chicago "*for the purpose of discussing and negotiating such proposed contract for the sale of his* (*Brooks*') *stock*", which was done. (App. 45). Most of the ultimate contract was negotiated and formally "accepted" by the defendant in Chicago. The basis of the Court's decision is that the business related to the cause of action, which was actually and in fact transacted in Illinois, was transacted there for the "*convenience*" of the defendant, in that he desired on the same trip to do something else in the state, *i.e.*, to attend a convention. The Court held that the fact that such business was transacted in Illinois was, *therefore*, "wholly fortuitous", and *consequently* not within the Statute.

The fact that the Court of Appeals based its decision on the above asserted new principle of law is evidenced by the statement of the Official Reporter immediately preceding the official report of this case in 267 F. 2d

394. The statement of the Court's holding by the Official Reporter is that "a meeting of the parties *for purpose of discussing sale, arranged to be held* in Chicago *for convenience*, in that seller was attending convention there, did not constitute the transaction of business in Illinois *such as would justify* Illinois in asserting jurisdiction in personam over seller." (Our italics).

The second head note preceding the Court's decision at 267 F. 2d 395, states that a meeting "*for purpose of discussing sale, arranged to be held* in Chicago *for convenience* in that seller was attending convention there, did not constitute transaction of business in Illinois *such as would justify* Illinois in asserting jurisdiction in personam over seller." (Our italics).

It is obvious from the statement in the official report of the Court's decision, and also from the Court's own statements in its opinion that the defendant "purposed" and intended to and did in fact conduct "*any* of the business" related to the cause of action when he came to Chicago, and that the Court of Appeals recognized that fact. It is clear that the basis of the Court's decision is that because defendant *also* "purposed" or "intended" to do something else in Chicago, that the business relating to the cause of action was transacted here as a matter of "convenience", and was, *therefore*, "wholly fortuitous", and was *consequently* not within the Illinois Statute.

It is highly improbable that any defendant in any case would spend two days in Chicago, where part of his time was occupied in "transacting business" related to a cause of action, and not, while he was there, do something else, such as talk to a friend, or see a ball game, or attend a theatre, or attend a convention. And, if such defendant were to testify that, before he went to the state, he

mentally had the "intention" or "purpose" of doing such other act, in addition to transacting the business related to the cause of action, so that it was "convenient" for him to transact the business related to the cause of action in Chicago at the same time, he would, under this decision, be completely exempt from the operation of the Illinois Statute, or the comparable Statute of any other state, so far as the jurisdiction of that state over him is concerned. In such case the "transaction of business" related to the cause of action in question, according to the Court's decision, would be "wholly fortuitous" and, *therefore*, not within the statute.

The above principle of law decided by the Seventh Circuit Court of Appeals in this case is in conflict with the decision of the Court of Appeals, Ninth Circuit, appearing in the same Advance Sheets in which this case is reported. In *Bush* v. *United States*, 267 F. 2d 483, the Ninth Circuit Court of Appeals held that even in a case where "purpose" or "intent" to act within the state is admittedly a jurisdictional requirement, that it is sufficient if such "purpose" and "intent" is one of the reasons, but not the only reason, for defendant to enter the state.

And in *Masse* v. *United States*, 210 F. 2d 418, the Fifth Circuit Court of Appeals held to the same effect, even where the "primary" purpose of defendant in entering the state was something other and different from the purpose required by Statute.

CONCLUSION.

We believe that the sole question on this petition is whether or not the decision of the Seventh Circuit Court of Appeals is to stand as a precedent, substantially modifying, and rendering largely ineffective the decision of this Court in *International Shoe Co. v. Washington*, 326 U.S. 310, and the Statutes of various states enacted pursuant thereto, by subjecting them to the totally new condition or qualification that they are inapplicable whenever a defendant initially has a purpose or intent to also do something in the state besides the purpose of there transacting the business related to the cause of action in question.

The decision of the Seventh Circuit Court of Appeals is in conflict with decisions of other U. S. Courts of Appeals and the Courts of last resort of several states. We believe it is inevitable that this decision will occasion substantial confusion, and further litigation unless and until it is reviewed by this Court.

Respectfully submitted,

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